IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1273 OF 2004

Niloba Nana Durge .. Appellant

Versus

Bhimsen Dhondiba Durge & Anr. .. Respondents

Mr.Ajit Anekar for appellant

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Pune dated 18.12.2003 allowing the appeal and setting aside the judgment and order passed by Civil Judge, Junior Division, Ghodnadi, Dist.Pune dated 19.2.1997 decreeing the suit possession of the suit property of encroached portion.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit against the defendants alleging that the defendants, who are the land holder of adjacent land had encroached upon his property to the extent of 12 Are and hence the suit for possession by removal of encroachment came to be filed. The defendants contested the suit denying the plaintiff’s case. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the defendants had encroached upon the property belonging to the plaintiff to the extent of 12 Are and as such he was entitled for consequent reliefs and the suit was decreed.

4. The appeal was carried to the District Court, Pune. The learned District Judge heard both sides and on the basis of available evidence came to the conclusion that the lower court erred in recording finding that the plaintiff had proved that the defendants had encroached upon his land and hence allowed the appeal and dismissed the suit by setting aside the order passed by the lower court. Hence the

present appeal.

5. At the outset it may be noted that there is absolutely no substantial question of law involved. The only grievance raised on behalf of the appellant is regarding the appreciation of Surveyor's evidence and map Exh.38. The learned District Judge has recorded the cogent reasons why he was not ready to accept the evidence of Surveyor, which was admittedly the only evidence upon which the plaintiff had relied upon, and therefore, it was necessary to scrutinise the Surveyor's evidence critically. The evidence of Surveyor was found to be lacking in technical details. Moreover, it is apparent from the record that Surveyor had drawn the map of Survey No.831 only, which was proved on record. However, he had not compared measurement of field Gat No.829 in order to ascertain whether the defendants had encroached upon the land of the plaintiff, and if so, to what extent. It is the cardinal principle of law in this regard that unless both the lands are measured there cannot be comparison between the measurements of two lands, nor there can be material available to ascertain whether the defendants have infact encroached upon the land of the plaintiff or not. In other words,

merely measuring the land of the plaintiff would not be sufficient to ascertain the allegations that the defendants have encroached upon the land of the plaintiff.

6. Be as it may, the fact remains that the appreciation of available evidence made by the learned District Judge cannot be faulted with and there appears no reason to interfere in the said reasoning and in the result the appeal stands dismissed.